

Jul 29, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CARLOS E. IBARRA,

Petitioner,

v.

STATE OF WASHINGTON
(JEFFERY A. UTTECHT,
Superintendent of CRCC),

Respondent.

4:19-cv-00205-SAB

**ORDER TO PROCEED IN
FORMA PAUPERIS, GRANTING
MOTION TO SUBSTITUTE
RESPONDENT AND
SUMMARILY DISMISSING
HABEAS PETITION**

Petitioner, a prisoner at the Coyote Ridge Corrections Center, brings this pro se Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. Because it appears Petitioner lacks sufficient funds to prosecute this action, his request to proceed in forma pauperis is granted and this action may proceed without payment of the filing fee.

PROPER RESPONDENT

An initial defect with the Petition is that it fails to name a proper party as a respondent. The proper respondent in a federal petition seeking habeas corpus relief is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). Petitioner

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1 filed a motion to substitute the proper respondent, Jeffery A. Uttecht,
2 Superintendent of the Coyote Ridge Corrections Center. ECF No. 5. That motion is
3 **granted.**

4 **EXHAUSTION REQUIREMENT**

5 Petitioner challenges his 2019 Grant County guilty plea to vehicular
6 homicide. He was sentenced to 114 months' incarceration. Petitioner indicates
7 that he did not appeal his conviction and sentence. ECF No. 1 at 3.

8 In his grounds for relief, Petitioner argues that the State of Washington has
9 no jurisdiction to decide federal constitutional matters. ECF No. 1 at 6-13. It has
10 long been settled that state courts are competent to decide questions arising under
11 the U.S. Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) ("It is the duty
12 of the state court, as much as it is that of the federal courts, when the question of
13 the validity of a state statute is necessarily involved, as being in alleged violation
14 of any provision of the federal constitution, to decide that question, and to hold the
15 law void if it violate that instrument."); *see also Worldwide Church of God v.*
16 *McNair*, 805 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as
17 competent as federal courts to decide federal constitutional matters). Therefore,
18 Petitioner's arguments to the contrary lack merit.

19 Additionally, before a federal court may grant habeas relief to a state
20 prisoner, the prisoner must exhaust the state court remedies available to him. 28
21 U.S.C. § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally
22 requires that a prisoner give the state courts an opportunity to act on his claims
23 before he presents those claims to a federal court. *O'Sullivan v. Boerckel*, 526 U.S.
24 838 (1999). A petitioner has not exhausted a claim for relief so long as the
25 petitioner has a right under state law to raise the claim by available procedure. *See*
26 *Id.*; 28 U.S.C. § 2254(c).

1 To meet the exhaustion requirement, the petitioner must have “fairly
2 present[ed] his claim in each appropriate state court (including a state supreme
3 court with powers of discretionary review), thereby alerting that court to the
4 federal nature of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*,
5 513 U.S. 364, 365–66 (1995). A petitioner fairly presents a claim to the state court
6 by describing the factual or legal bases for that claim and by alerting the state court
7 “to the fact that the ... [petitioner is] asserting claims under the United States
8 Constitution.” *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249
9 F.3d 895, 898 (9th Cir. 2001) (same). Mere similarity between a claim raised in
10 state court and a claim in a federal habeas petition is insufficient. *Duncan*, 513
11 U.S. at 365–366.

12 Furthermore, to fairly present a claim, the petitioner “must give the state
13 courts one full opportunity to resolve any constitutional issues by invoking one
14 complete round of the State's established appellate review process.” *O'Sullivan*,
15 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,
16 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275
17 (1971). It appears from the face of the Petition and the attached documents that
18 Petitioner has not exhausted his state court remedies as to each of his grounds for
19 relief. Indeed, Petitioner affirmatively represents that he did not exhaust his state
20 court remedies.

21 **GROUND FOR FEDERAL HABEAS RELIEF**

22 Petitioner asserts that the Washington state constitution contradicts the
23 federal constitution regarding the Fifth Amendment right to “presentment or
24 indictment of a Grand Jury.” He claims “no bill of indictment” was brought
25 against him rendering his arrest, conviction and imprisonment illegal.

26 Petitioner seems to argue that because the state courts have defied “federally
27 established procedures and processes for the adjudication of crimes” only “a court

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1 of federal jurisdiction” has jurisdictional authority over his claims. His bald
2 assertion that “due process of the law was ignored” is unsupported by his factual
3 allegations.

4 The United States Supreme Court stated long ago: “Prosecution by
5 information instead of by indictment is provided for by the laws of Washington.
6 This is not a violation of the Federal Constitution.” *See Gaines v. Washington*, 277
7 U.S. 81, 86 (1928). Consequently, Petitioner’s assertions to the contrary presented
8 in his four grounds for federal habeas relief are legally frivolous.

9 Because it plainly appears from the petition and accompanying documents
10 that Petitioner is not entitled to relief in this Court, **IT IS ORDERED** the petition,
11 ECF No. 1, is **DISMISSED** pursuant to Rule 4, Rules Governing Section 2254
12 Cases in the United States District Courts.

13 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
14 enter judgment, provide copies to Petitioner, and close the file. The Court certifies
15 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
16 taken in good faith, and there is no basis upon which to issue a certificate of
17 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of
18 appealability is therefore **DENIED**.

19 **DATED** this 29th day of July 2019.
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A handwritten signature in blue ink that reads "Stanley A. Bastian".

26 Stanley A. Bastian
27 United States District Judge

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